IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

REBECCA SCHILLING	:	
v.	:	Civil No. CCB-07-1518
UNIVERSITY OF MARYLAND MEDICAL SYSTEMS CORPORATION	:	

MEMORANDUM

Rebecca Schilling ("Ms. Schilling") has sued the University of Maryland Medical Systems Corporation ("UMMS") for violations of the Americans with Disabilities Act ("ADA") and the Family Medical Leave Act ("FMLA"). Now pending before the court are UMMS's motion for summary judgment and Ms. Schilling's motion for partial summary judgment on the issue of her ADA claim. The issues have been fully briefed and no hearing is necessary. *See* Local Rule 105.6. For the reasons articulated below, UMMS's motion will be granted and Ms. Schilling's motion will be denied. Also pending is UMMS's motion to strike Plaintiff's Reply to Defendant's Response; that motion will be granted as to the affidavits containing hearsay statements from Shamika Williams.

BACKGROUND

Ms. Schilling began her employment with UMMS in 1998 as a Vascular Lab Technician; she ultimately rose to the position of Technical Director of the Diagnostic Vascular Laboratory,

a role in which she supervised other employees in the Vascular Lab. In September 2005, Ms. Schilling notified Judy Slide ("Ms. Slide"), her supervisor, that she was being "worked up" for multiple sclerosis, and needed to reduce her hours in the lab. (Pl's Opp'n Ex. 2 at 20.) Ms. Slide recalls that Ms. Schilling was asking for intermittent family leave in the amount of one day a week, and that "there was a request for [Ms. Schilling] to have . . . 3 days off in a row to provide an opportunity for her to rest." (*Id*. at 14-16.) According to Ms. Slide, there was no other discussion at the time about Ms. Schilling's health. (*Id.* at 20.)

An "Application for Leave of Absence," dated September 12, 2005, states that Ms. Schilling was requesting leave from October 3, 2005 to "unknown"; the box marked "Personal Serious Health Condition" is checked. (Def's Mot. Summ. J. Ex. 8 at 1.) The leave was approved by Dr. William Flinn, Medical Director of the Vascular Lab, whose signature appears under "Supervisor's Signature." (*Id.*) Attached is another form, an undated one filled out by Ms. Schilling's physician, Marcia Waterbury ("Dr. Waterbury"). That document lists, as reasons supporting Ms. Schilling's need for leave, "[r]ecurrent major depression with associated anxiety, insomnia, and work related stressors." (*Id.* at 3.) Asked whether it was necessary for the employee to work less than a full schedule, Dr. Waterbury wrote "[n]ecessary to reduce hours to no more than 30-35 hours per week." (*Id.*) There is no other contemporaneous documentation of Ms. Schilling's request for intermittent leave, course of treatment, or ultimate diagnosis - though Ms. Schilling claimed during her deposition that she told Ms. Slide she was diagnosed with multiple sclerosis. (Pl's Opp'n Ex. 1 at 153.)

From mid-October until the end of December 2005, Ms. Schilling left work early on Mondays and Tuesdays and did not work on Fridays. For the most part, this schedule is borne

out by the Kronos timekeeping log, which records employees' hours worked via the swipe of an electromagnetic card. (Def's Mot. Summ. J. Ex. 10 at 2-5.) At some point in mid-December 2005, Dr. Flinn requested that Ms. Schilling change the day she took off from Friday to Thursday. (Def's Mot. Summ. J. Ex. 5 at 78-79.) Dr. Flinn claims that this was because Fridays were busy days in the lab, and that the ultrasonographers had complained about the workload; Ms. Schilling disputes that this was cited to her as a reason. (Def's Mot. Summ. J. Ex. 11 at 30-31, Ex. 5 at 79.) Dr. Flinn also claims that he only proposed Ms. Schilling change her day off if the new schedule would be acceptable to her health care provider, and that at a subsequent meeting, Ms. Schilling said Wednesday would be satisfactory to her. (Def's Mot. Summ. J. Ex. 11 at 36, 46.)

Ms. Schilling alleges that at this point, Dr. Flinn became "outwardly hostile" to her, ultimately stating that "her leave requests were 'ridiculous' and that the full day of leave per week 'cannot continue.'" (Pl's Opp'n 7.)[1] For his part, Dr. Flinn describes a series of meetings throughout January and February, in which he discussed "several administrative problems" that had been brought to his attention by Sue McEvoy, who at the time was the Lead Technician. (Def's Mot. Summ. J. Ex. 11 at 29-34.) Among the problems was, as discussed above, Ms. Schilling's being away from the lab on Fridays. Dr. Flinn also listed "concerns about employment retention, about recruitment," an upcoming "ICAVL accreditation application" and "declining morale" as part of the "administrative problems" he discussed with Ms. Schilling during that time. (*Id.* at 34-35.) Although there is no written documentation of these meetings,

[1]Dr. Flinn supports his denial of making such statements with the affidavit of Maureen Hyson, his administrative assistant, who was present for his discussions with Ms. Schilling. (*See* Def's Mot. Summ. J. Ex. 12 at ¶¶ 10, 11.)

(*id.* at 35), Ms. Schilling did allude in an email to a meeting with Dr. Flinn scheduled for early February at which Flinn's "issues" with her performance were to be discussed, including Flinn's opinion that "[Schilling was] not doing things that he feels [she] should be doing." (Def's Mot. Summ. J. Ex. 13.)

In another email, sent from Ms. Schilling to Ms. Slide during that same exchange, Schilling noted that her "FMLA leave is causing some issues with Dr. Flinn," and that she "was told to come back full time or resign." (*Id.*) According to an email from Ms. Schilling to Dr. Flinn, at some point prior to March 8, 2006, Ms. Schilling's day off changed from Friday to Thursday. (*See* Pl's Opp'n Ex. 9 (referring to medical appointments that "were scheduled before my day off changed to Thursday."))

An examination of the Kronos reports for the time period in question[2] reveals that Ms. Schilling took some leave between mid-December 2005 (the time of her initial discussion with Dr. Flinn) and March 14, 2006, the date of her termination. Schilling claims that between December 20, 2005 until March 2, 2006, she "did not take off from work one full day on Fridays," because the intermittent leave that had previously been extended to her was revoked. It is true that the Kronos report has only the following days logged as FMLA leave during that

[2]Ms. Schilling disputes that the Kronos records are an appropriate ledger of her time worked. (Pl's Reply Ex. 2 ¶¶ 3-6.) She claims that often, either an employee would forget to swipe his or her badge when entering or exiting the lab, or the swipe would fail to register in the system. For this to explain all of Ms. Schilling's absences, however, one would have to assume that the system failed to register Ms. Schilling's swipe both upon entry and exit of the same day - otherwise, it stands to reason that she would be recorded as having entered, but not left, the building. Indeed, this exact situation appears in the records, and the system appears to automatically enter an 8-hour day with the abbreviation "MO." (*See* Def's Mot. Summ. J. Ex. 10 at 6.)

period: Tuesday, December 20 (8 hours) and Thursday, March 2 (8 hours).[3] It is not the case, however, that Ms. Schilling worked a full week during that time (save for one week, that of February 6, 2006). Indeed, there is no entry or exit at all logged during the last week of December or the first week of January; Ms. Schilling later admitted that she was on vacation during the last week of December, (*see* Def's Mot. Summ. J. Ex. 5 at 81), though she did not enter that in the Kronos system. The system also has her absent from work on Friday, January 13th; Thursday and Friday, January 19-20th; Friday, January 27th; and Wednesday, February 1st.[4] (Def's Mot. Summ. J. Ex. 10 at 5-6.) February 14-21st is entered as vacation. (*Id.* at 6.) It is unclear from the record whether the Kronos system simply failed to record her on those days, whether they were treated as FMLA leave, whether Ms. Schilling took the days as vacation, or whether they constituted leave without pay.

In March 2006, Ms. Schilling was terminated for improperly accessing the medical records of another employee in the Vascular Lab. (Def's Mot. Summ. J. Ex. 16.) The employees of the Lab have access to confidential medical records, but are required to sign a confidentiality agreement that prohibits employees from accessing that information except in

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[3]As noted above, at some point Ms. Schilling was apparently taking FMLA leave on Thursdays. (*See* Def's Mot. Summ. J. Ex. 9 (stating, in email from Ms. Schilling to Dr. Flinn, that she would be taking FMLA leave to attend doctors' appointments that she had scheduled "before [her] day off changed to Thursday.")

[4]Ms. Schilling flatly denies being absent from work on these dates. (Pl's Reply Ex. 2 ¶¶ 4, 6.) She claims that a more accurate recording of her attendance could be found on her weekly timesheets, which the defendant has yet to produce. (Pl's Reply 3.) Ms. Schilling's presence or absence at work, however, is not ultimately relevant to the question at hand, as she was not fired for excessive absenteeism. The more pertinent question, as explained below, is whether Dr. Flinn's request for her to change her day off from Friday constituted a violation of Ms. Schilling's rights under FMLA and the ADA.

certain limited circumstances. Specifically, employees are "only authorized to access this information if it is required for [them] to perform [their] duties," and such access must be limited "to the extent that it is necessary to provide patient care." (Def's Mot. Summ. J. Ex. 3.) Moreover, "failure to follow this policy regarding the confidentiality of information may be cause for termination of employment." (*Id.*)

An affidavit from Maureen Hyson ("Ms. Hyson"), Dr. Flinn's assistant, states that Ms. Hyson was approached by Shamika Williams, an Administrative Assistant in the Vascular Lab, with concerns that Ms. Schilling had inappropriately accessed her medical records. (Def's Mot. Summ. J. Ex. 12 at ¶ 6.) Ms. Hyson also avers that "on several occasions," employees including Sue McEvoy and Christina Schroyer told her that "Schilling had boasted that . . . [she] had the right to access the employee's email, as well as their medical records." (*Id.* at ¶ 5.) Schilling disputes that Ms. Williams ever complained about her unauthorized access[5] and alleges that her

[5]In her Reply, Ms. Schilling claims that Ms. Williams herself denies ever complaining about unauthorized access to her medical records. (Pl's Reply 2.) Attached to this reply are an affidavit from Ms. Schilling, including a copy of an email from Ms. Williams, and an affidavit from Roberta Cutchin, Ms. Schilling's partner. Both affidavits relate a conversation between Ms. Schilling and Ms. Williams in which Ms. Williams purportedly denied ever reporting to anyone at UMMS that Ms. Schilling had accessed her medical information. (Pl's Reply Ex. 2, 3.)

UMMS has moved to strike Ms. Schilling's reply on the grounds that it exceeds the scope of the response; it also notes that the attached affidavits contain hearsay which may not be considered when deciding the motion for summary judgment. The motion will be granted as to the affidavits. Simply put, Ms. Schilling attempts to introduce Ms. Williams's comments to prove the truth of the matter asserted - namely, that Ms. Williams never told Ms. Hyson or any UMMS employee that she was concerned about Ms. Schilling accessing her medical records. Ms. Schilling attempts to claim that the statements and email are being offered to show their effect on her (Ms. Schilling), but it is unclear how that would be pertinent to any of the issues in the case. Other defenses against hearsay are similarly unavailing. As UMMS notes, Ms. Williams is not an employee of UMMS; rather, she "is employed by an independent medical group which provides services at a hospital operated by UMMS." (Def's Resp. Mot. Strike 10.)

Even if the statements from Ms. Williams were admissible, they are not necessarily

violation of UMMS policy was "known before March, 2006, and . . . used as a mechanism to shade the true reason for Schilling's termination." (Pl's Opp'n 11 n.8.) An investigation revealed that Ms. Schilling had accessed Ms. Williams's records on three occasions; Ms. McEvoy and Ms. Schroyer had each accessed the records once.[6] (Def's Mot. Summ. J. Ex. 14.) Ms. Schilling admits that she accessed Ms. Williams's medical records, but claimed that Ms. Williams had asked her to because Ms. Williams did not know how to read certain test results. (Def's Mot. Summ. J. Ex. 5 at 108.) Ms. Schilling's employment was terminated on March 14, 2006 due to her "failure to follow the policy regarding the confidentiality of information, as evidenced by [] inappropriately accessing patients' medical records on several occasions." (Def's Mot. Summ. J. Ex. 16.)

ANALYSIS

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment

> shall be rendered forthwith if the pleadings, depositions, answers to

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helpful to the plaintiff's position once the entire picture is considered. Despite Ms. Schilling's claim that Ms. Williams was concerned and willing to help Schilling's case, Ms. Williams declined Ms. Schilling's request to meet and sign an affidavit. Additionally, UMMS has submitted an affidavit from Maureen Hyson in which Ms. Hyson states that Ms. Williams called her after Ms. Schilling's attempts to contact Ms. Williams, and that in that conversation Ms. Williams claimed to never have given consent to Ms. Schilling to access her medical records - contradicting Ms. Schilling's sworn testimony. (Def's Mot. Summ. J. Ex. 12 at ¶ 9.)

[6]Ms. McEvoy and Ms. Schroyer were both disciplined for accessing Ms. Williams's medical records; each received a one-day disciplinary suspension along with a final written warning. (Def's Mot. Summ. J. Ex. 6 at ¶ 10, 7 at ¶ 10.) Ms. Slide explained the discrepancy in punishments as stemming from Ms. Schilling's supervisory position; specifically, "Ms. Schilling was responsible for upholding the policies and procedures of the medical center. She did not do that in the case of privacy of medical information with respect to her employees." (Def's Mot. Summ. J. Ex. 9 at 66.)

> interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The Supreme Court has clarified that this does not mean that any factual dispute will defeat the motion:

> By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48, (1986) (emphasis in original).

"A party opposing a properly supported motion for summary judgment 'may not rest upon the mere allegations or denials of [his] pleadings,' but rather must 'set forth specific facts showing that there is a genuine issue for trial." *' Bouchat v. Baltimore Ravens Football Club, Inc.*, 346 F.3d 514, 525 (4th Cir.2003) (alteration in original) (quoting Fed.R.Civ.P. 56(e)). The court must "view the evidence in the light most favorable to ... the nonmovant, and draw all reasonable inferences in her favor without weighing the evidence or assessing the witness' credibility," *Dennis v. Columbia Colleton Med. Ctr.*, Inc., 290 F.3d 639, 644-45 (4th Cir.2002), but the court also must abide by the "affirmative obligation of the trial judge to prevent factually unsupported claims and defenses from proceeding to trial." *Bouchat*, 346 F.3d at 526 (internal quotation marks omitted) (quoting *Drewitt v. Pratt*, 999 F.2d 774, 778-79 (4th Cir.1993), and citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986)).

Family and Medical Leave Act Claims

The Family and Medical Leave Act (FMLA) is designed "to entitle employees to take

reasonable leave for medical reasons." 29 U.S.C. § 2601(b)(2) (2005). Qualified employees are entitled to a total of twelve workweeks of leave during any 12-month period; such leave may be taken intermittently when medically necessary. *Id.* at § 2612. An employer may require that a request for leave be supported by "a certification issued by the health care provider of the eligible employee or of the son, daughter, spouse, or parent of the employee, as appropriate." *Id.* at § 2613(a).

The FMLA creates two types of claims. The first includes interference claims, which are based on alleged attempts by an employer to "interfere with, restrain, or deny the exercise of or the attempt to exercise" any right protected by the Act, *id.* at § 2615(a)(1); interference claims encompass violations of the right to be reinstated to a similar position after taking leave. The second is based on retaliation; these claims result from an employer's allegedly "discharg[ing] or in any other manner discriminat[ing] against any individual for opposing any practice made unlawful by" FMLA, *id.* at § 2615(a)(2). Here, Ms. Schilling appears to claim both an interference violation and a retaliation violation. The complaint alleges that UMMS "became increasingly resistant, and in fact, hostile, to said accommodation of leave on Fridays." (Compl. at ¶ 44.) It also alleges that "the Defendant's involuntary discharge of the Plaintiff . . . and the Defendant's retaliation against the Plaintiff for exercising her rights" were FMLA violations. (Compl. at ¶ 48.)

Ms. Schilling bases her FMLA claims on Dr. Flinn's request that she move her day off from Fridays to Thursdays, an alleged denial of three consecutive days' away from work. Ms. Slide was aware, after her initial conversation with Ms. Schilling, that Ms. Schilling was requesting three consecutive days off. (Pl's Opp'n Ex. 2 at 16 ("[T]here was a request for her to

have about - to try to have 3 days off in a row to provide an opportunity for her to rest, if I remember correctly.")) Ms. Schilling did not, however, submit any medical documentation to UMMS supporting the three days off request; the only medical documentation she did provide made no mention of any requirement that the days off be consecutive. (*See* Pl's Opp'n Ex. 5.) That document, signed by Dr. Waterbury, states only that Ms. Schilling was to reduce her hours to 30-35 hours per week.[7] (*Id.*) Nor did Ms. Schilling provide any such documentation when Dr. Flinn requested that she change her day off from Fridays to Thursdays, in contravention of what Schilling claims were her doctor's orders. Nor would Dr. Flinn's alleged statement that Ms. Schilling must "return to full-time or resign"[8] constitute interference. Simply put, there is no evidence that Ms. Schilling was forced to return to full-time. In fact, the Kronos report only recorded one week of full-time work during the time period Ms. Schilling complains about - between December 20, 2005 and March 2, 2006. (Def's Mot. Summ. J. Ex. 10.) Moreover, an email from Ms. Schilling to Dr. Flinn refers to medical appointments that had been scheduled "before [her] day off changed to Thursday"; around the time of her termination, therefore, by her own statement, Ms. Schilling was still only working four days a week. (*See* Pl's Opp'n Ex. 9.)

Ms. Schilling's retaliation claim also must be denied. In order to bring a claim for wrongful termination under FMLA, Ms. Schilling must first establish a prima facie case of discrimination or retaliation. *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 141-42 (2000); *Nichols v. Ashland Hosp. Corp.*, 251 F.3d 496, 502 (4th Cir. 2001). She must show

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[7]As UMMS points our, it is unclear how a 35 hour workweek, apparently permissible to Ms. Schilling's physician, would be compatible with even one full day off per week.

[8]Dr. Flinn denies ever having made this statement, and Ms. Hyson corroborates his account. (Def's Mot. Summ. J. Ex. 11 at 38, Ex. 12 at ¶ 11.)

that she availed herself of a protected right under the FMLA; that she was adversely affected by an employment decision; and that there was a causal connection between her protected activity and the adverse employment action. The defendant's burden is one of production, and the court should not evaluate the credibility of the defendant's explanation. *Reeves*, 530 U.S. at 142. Once such a reason is offered, the burden returns to Ms. Schilling to demonstrate a trial-worthy issue of pretext - that is, that the legitimate reasons offered by the defendant were not its true reasons. *Texas Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 256 (1981).

Even assuming that Ms. Schilling had established a prima facie case of discrimination or retaliation, UMMS has produced evidence that would permit a rational fact-finder to conclude that the employment action was taken for a legitimate, non-discriminatory reason - specifically, Ms. Schilling's violation of the UMMS policy forbidding access to patient medical records. Ms. Schilling does not deny that she accessed the records; indeed, she admits to it. (Def's Mot. Summ. J. Ex. 5 at 108-09.)

Ms. Schilling must show not only that this explanation was false, but that discrimination was the true motivation behind her termination. *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 515-16 (1993). She may do that either by showing that UMMS's stated reasons are not credible, or by showing that the action was more likely motivated by discriminatory animus. *Burdine*, 450 U.S. at 256. Ms. Schilling claims that UMMS's stated reason was pretextual. In support of this allegation, she states that "[i]t has never been fully explained by the Defendant how the allegations regarding Schilling's accessing of Williams' medical chart, acts which occurred in February, 2004, came to light in March, 2006, at the very moment Schilling was embroiled in a contentious dispute" with UMMS over the scheduling of her leave. (Pl's Opp'n 11 n.8.) This is

incorrect; UMMS has submitted Ms. Hyson's affidavit, in which Ms. Hyson states that it was in March 2006 that Shamika Williams "contacted me about her concern that Schilling, and perhaps others in the Vascular Laboratory, had improperly accessed Williams' medical records while she was a patient at University Hospital." (Def's Mot. Summ. J. Ex. 12 at ¶ 6.) It was after Ms. Williams's complaint that UMMS launched its investigation into the improper access of medical records by Vascular Lab staff. (Def's Mot. Summ. J. Ex. 9 at 74.)

Ms. Schilling claims that the disparity between the harshness of the disciplinary measures meted out to Ms. Schroyer and Ms. McEvoy and that given to Ms. Schilling provide evidence of pretext. As Ms. Slide pointed out in her deposition, however, as the supervisor of the Vascular Lab, Ms. Schilling was held to a higher standard than Ms. McEvoy and Ms. Schroyer. (Def's Mot. Summ. J. Ex. 9 at 66-72.) Ms. Slide believed that "the tone and the permissiveness around accessing patient records had been set by Ms. Schilling." (*Id.* at 66.) Ms. Schroyer and Ms. McEvoy, former subordinates of Ms. Schilling, support Ms. Slide's belief; McEvoy noted in her affidavit that "Schilling had stated to me and other Vascular Laboratory employees on several occasions that it was her right as Technical Director to access employee medical records." (Def's Mot. Summ. J. Ex. 6 at ¶ 6.) Accordingly, Ms. Schilling's "subordinates are not 'similarly-situated' employees" for the purpose of establishing discrimination. *Oguezuonu v. Genesis Health Ventures, Inc.*, 415 F. Supp. 2d 577, 584-85 (D. Md. 2005). Ultimately, Ms. Schilling has not met her burden of demonstrating that UMMS's proffered reason for terminating her employment was pretextual, and her retaliation claim fails.

Americans with Disabilities Act Claim

The ADA and Rehabilitation Act prohibit discrimination against an otherwise qualified individual with a disability based solely on that disability. 42 U.S.C. § 12112(a). To establish a prima facie case for wrongful discharge, the plaintiff must establish that "(1) he is within the ADA's protected class; (2) he was discharged; (3) at the time of his discharge, he was performing the job at a level that met his employer's legitimate expectations; and (4) his discharge occurred under circumstances that raise a reasonable inference of unlawful discrimination." *Haulbrook v. Michelin North America*, 252 F.3d 696, 702 (4th Cir. 2001) (citing *Ennis v. Nat'l Ass'n of Bus. & Educ. Radio*, 53 F.3d 55, 58 (4th Cir.1995)). Ms. Schilling has also alleged that the UMMS failed to make a reasonable accommodation for her disability. The ADA defines a 'reasonable accommodation' to include "job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities." 42 U.S.C. § 12111(9)(B). The Fourth Circuit has held that to establish a prima facie case for failure to accommodate, the plaintiff must show that (1) she was an individual who had a disability within the meaning of the statute; (2) the employer had notice of her disability; (3) with reasonable accommodation she could perform the essential functions of the position; and (4) the employer refused to make such accommodations. *Rhoads v. F.D.I.C.*, 257 F.3d 373, 387 n.11 (4th Cir. 2001) (citing *Mitchell v. Washingtonville Cent. Sch. Dist.*, 190 F.3d 1, 6 (2d Cir.1999).

Ms. Schilling claims that UMMS violated the ADA through its "failure and refusal to continue to provide the necessary accommodation to the work environment and schedule of the

Plaintiff," its "failure to engage in an interactive dialogue," and Ms. Schilling's termination. (Compl. at ¶ 35.) Assuming without deciding that Ms. Schilling is a member of the class of persons protected by the ADA, there is no evidence that UMMS failed to provide a reasonable accommodation for her health condition. Ms. Schilling's primary complaint appears to be that during the disputed time period, she worked on Fridays. (Pl's Opp'n 18.) Ms. Schilling has submitted no medical documentation, however, to show that she needed three consecutive days away from work. Ms. Schilling admits that the documentation she produced in support of her request for intermittent FMLA leave was the same documentation she assumed would be sufficient for her ADA accommodation request. (Def's Mot. Summ. J. Ex. 5 at 98-99.)

Additionally, as discussed above, there is no indication that Ms. Schilling was ever denied any leave; in fact, the computer log of her attendance during the disputed time period shows that Ms. Schilling was absent from work five days between the first week of January and the last week of February, and also took a six-day vacation during that time. (Def's Mot. Summ. J. Ex. 10.) Ms. Schilling's own email to Dr. Flinn reveals that her day off had "changed" from Fridays to Thursdays - undermining any argument that she was being denied leave at that time. (Pl's Opp'n Ex. 9.)

Ms. Schilling's retaliation claim also fails. As discussed above, even assuming that Ms. Schilling could establish a prima facie case of retaliation, UMMS has produced evidence of a legitimate, non-discriminatory reason for Ms. Schilling's termination: her unauthorized accessing of the private medical records of Ms. Williams. Ms. Schilling has not met her burden of demonstrating that the proffered reason was pretextual.

CONCLUSION

For the reasons stated above, UMMS's motion for summary judgment will be granted and Ms. Schilling's motion for partial summary judgment will be denied.

August 6, 2008
Date

/s/
Catherine C. Blake
United States District Judge